

# COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC  
WASHINGTON, DC 20004-2401 NEW YORK  
TEL 202.662.6000 LONDON  
FAX 202.662.6291 BRUSSELS  
WWW.COV.COM SAN FRANCISCO

JENNIFER A. JOHNSON  
TEL 202.662.5552  
FAX 202.778.5552  
JJOHNSON@COV.COM

August 15, 2005

## FILED ELECTRONICALLY

Ms. Nazifa Sawez  
Video Services, Media Bureau  
Federal Communications Commission  
Room 2-A726  
445 Twelfth Street, S.W.  
Washington, DC 20554

**Re: DTV Channel Election: First Round Conflict Decision  
File No. BFRCT-20050815ADO**

**New York Times Management Services  
WHNT-DT, Huntsville, AL (Facility ID 48693)**

**MB Docket No. 03-15**

Dear Nazifa:

This is in reference to the DTV channel election of New York Times Management Services ("WHNT"), licensee of WHNT-TV, Huntsville, Alabama (Facility ID 48693), NTSC channel 19/DTV channel 59. Because WHNT has out-of-core DTV channel 59, on February 10, 2005, it filed an FCC Form 382 electing its in-core analog channel for post-DTV transition operation. On June 7, 2005, the Media Bureau sent WHNT a letter identifying four stations that would receive interference in excess of 0.1% from WHNT's post-transition DTV operations on channel 19: 0.3% to elected NTSC Ch. 18 of WCLP-TV, Chatsworth, GA; 0.3% to elected DTV Ch. 19 of WGCL-TV, Atlanta, GA; 1.3% to elected DTV Ch. 18 of WDBB, Bessemer, AL; and 6.1% to elected DTV Ch. 20 of WYLE, Florence, AL

Today, WHNT filed its Form 383 First Round Conflict Decision (BFRCT-20050815ADO), indicating its intention to maintain its election of its in-core channel 19 for post-transition DTV operations. On its Form 383, WHNT indicated its intent to maintain its channel 19 election by selecting option 2 (a). It also indicated that it had resolved its conflicts in part, though a negotiated conflict resolution agreement with Meredith Corporation, licensee of WGCL-TV (copy attached). With respect to the other three conflicts identified in the Bureau's June 7, 2005, letter: (i) the interference conflict

COVINGTON & BURLING

Ms. Nazifa Sawez  
August 15, 2005  
Page Two

with WCLP-TV has been resolved by the filing of a Form 383 on July 13, 2005 (BFR CET-20050713ABB) changing WCLP-TV's channel election to its DTV channel 33; and (ii) with respect to WDBB and WYLE, WHNT has filed a Supplemental Showing in Support of the First Round Channel Election (copy attached) urging the Commission to grant its channel election based upon the standard established in its *Second DTV Biennial Review* affording a "high priority" to permitting stations with out-of-core DTV channels to operate on their in-core NTSC channels after the DTV transition even when interference is caused to other stations in excess of 0.1%.

Please direct any questions with respect to this matter to the undersigned.

Respectfully submitted,



Jennifer A. Johnson  
Aaron Cooper  
*Counsel for New York Times Management  
Services*

Attachments: 1) Form 383 of WHNT  
2) Interference Acceptance Agreement  
3) Supplemental Showing in Support of the  
First Round DTV Channel Election of WHNT-TV

cc: Marlene H. Dortch  
Donna Gregg  
Rick Chessen  
Joyce Bernstein  
Kim Matthews  
Francisco Montero, Counsel for WDBB  
Kevin Walsh, Counsel for WYLE

Federal Communications Commission Washington, D.C. 20554  <b>FCC 383</b>	Approved by OMB 3060-1075 (October 2004)  FOR FCC USE ONLY
<b>DIGITAL CHANNEL ELECTION FORM          FIRST ROUND CONFLICT DECISION</b>  <b>Must Be Filed by:</b>  Please Read INSTRUCTIONS Before Completing This Form	FOR COMMISSION USE ONLY FILE NO. - 20050815ADO

**Section I - General Information**

<b>Licensee/Permittee Information</b>			
1. Legal Name of the Licensee/Permittee NEW YORK TIMES MANAGEMENT SERVICES			
Mailing Address WHNT-TV, CORPORATE CENTER ONE, INT'L PLAZA 2202 NORTH WEST SHORE BOULEVARD, SUITE 370			
City TAMPA	State or Country (if foreign address) FL	ZIP Code 33607 -	
Telephone Number (include area code) 9015432103	E-Mail Address (if available) RON.WALTER@WREG.COM		
<b>Station / Facility Information</b>			
2. FCC Registration Number 0005179049			
Call Sign WHNT-TV	Facility ID Number 48693		
Community of License: City HUNTSVILLE	State AL		
3. <b>Currently Assigned Channels:</b>			
a. DTV Channel: 59 <input type="checkbox"/> Not Applicable			
b. NTSC Channel: 19 <input type="checkbox"/> Not Applicable			
<b>Contact Information (if different from licensee/permittee)</b>			
4. Contact Representative JENNIFER A. JOHNSON, ESQ.		Firm or Company Name COVINGTON & BURLING	
Mailing Address 1201 PENNSYLVANIA AVENUE, N.W.			
City WASHINGTON	State or Country (if foreign address) DC	ZIP Code 20004 - 2401	
Telephone Number (include area code) 2026625552	E-Mail Address (if available) JJOHNSON@COV.COM		
<b>Purpose of Form:</b>			
5. The purpose of the First Round Conflict Decision Form is for first round electors that were notified by the Commission that their channel election results in an interference conflict to make a decision concerning resolution of their interference conflict. (SELECT ONE)  a. <input checked="" type="radio"/> Conflict Decision b. <input type="radio"/> Amendment			

## Section II - CONFLICT DECISION

All television broadcast licensees and permittees notified by the Commission about an interference conflict are required to file a conflict decision form. Licensees/permittees that do not submit a required conflict decision form by the deadline on page one will be assigned a channel by the Commission for post-transition DTV operation.

1. By the filing of this form, licensee/permittee hereby acknowledges receipt from the Commission of information regarding the nature of its interference conflict.

(indicate FCC Letter reference number here): 1002

### First Round Conflict Decision:

2. Licensee/permittee makes the following decision about its interference conflict: <b>(SELECT ONE)</b>	
a. <input checked="" type="radio"/>	Licensee/permittee decides to maintain its first round channel election and certifies that it has resolved its interference conflict(s), as demonstrated by its submission of: <b>(Select at least one and all that apply)</b>  (i) <input checked="" type="checkbox"/> a negotiated conflict resolution agreement. <b>Licensee/permittee must complete Schedule A.</b>  (ii) <input type="checkbox"/> technical engineering data. <b>Licensee/permittee must complete Schedule B - DTV Engineering.</b>
b. <input type="radio"/>	Licensee/permittee decides not to maintain its first round channel election and changes its election for final DTV operation to its currently assigned in-core DTV channel: <span style="float: right;">Indicate channel number.</span>  NOTE: Post-transition rights to in-core NTSC channel currently assigned to the licensee/permittee for this station are released upon licensee/permittee receipt of a Commission tentative channel designation.
c. <input type="radio"/>	Licensee/permittee decides not to maintain its first round channel election and makes no channel election in the first round; accordingly, licensee/permittee elects to participate in the second round of elections.  NOTE: Post-transition rights to in-core channel(s) currently assigned to the licensee/permittee for this station are released.
<b>International Coordination.</b>	
3. Is the licensee/permittee electing a channel that is subject to a pending international coordination issue?	<input type="radio"/> Yes <input checked="" type="radio"/> No
If yes, licensee/permittee must attach an explanation as an <u>Exhibit</u> to this form. <span style="float: right;">[Exhibit 1]</span>	

## Section III

I certify that the statements in this form are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this election form. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing P. STEVEN AINSLEY	Typed or Printed Title of Person Signing PRESIDENT
Signature	Date 8/15/2005

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

## CONFLICT DECISION FORM SCHEDULE A

### SCHEDULE FOR NEGOTIATED CONFLICT RESOLUTION AGREEMENT

Licensees/permittees must complete this Schedule if they are involved in a negotiated conflict resolution or settlement agreement to resolve an interference conflict. The purpose of this Schedule is for licensees/permittees to provide details concerning their negotiated conflict resolution agreement.

#### 1. [Station List]

---

Licensee/permittee has entered into a negotiated conflict resolution agreement with the following licensee(s)/permittee(s): (provide name(s) and call sign(s) as necessary)

Licensee/Permittee Name	Call Sign	Facility ID No.
MEREDITH CORPORATION	WGCL-TV	72120

---

2. Licensee/permittee must provide a copy of the Negotiated Conflict Resolution Agreement and/or engineering information to the FCC upon request.

---

#### Exhibits

---

## INTERFERENCE ACCEPTANCE AGREEMENT

MB Docket No. 03-15

THIS INTERFERENCE ACCEPTANCE AGREEMENT is made as of August <sup>12<sup>th</sup></sup> 2005 between New York Times Management Services ("NYTMS") and Meredith Corporation ("Meredith Corp.").

NYTMS is the licensee of television broadcast station WHNT-TV, Channel 59 and WHNT-DT, Channel 19, Huntsville, AL ("WHNT"). Because its current DTV channel is in the "out-of-core" spectrum, NYTMS could not elect that channel for WHNT's operations after the conclusion of the digital television ("DTV") transition. Accordingly, on February 10, 2005, NYTMS made a first-round channel election filing with the Federal Communications Commission ("FCC") pursuant to which NYTMS elected Channel 19 for WHNT's operations after the conclusion of the DTV transition. NYTMS has determined that no other "in-core" channel is available in the Huntsville Designated Market Area ("DMA") that would allow WHNT to provide the same or similar level of DTV service as is currently provided by WHNT's operations on Channel 59.

Meredith Corp. is the licensee of television broadcast station WGCL-TV, Channel 46 and WGCL-DT, Channel 19, Atlanta, Georgia ("WGCL"). On January 21, 2005, Meredith Corp. made a first-round channel election filing with the FCC pursuant to which Meredith Corp. elected its DTV Channel 19 for WGCL's operations after the close of the DTV transition. On June 15, 2005, the FCC provided WGCL a tentative DTV channel designation on Channel 19 for such operation.

On June 7, 2005, the FCC sent a letter to NYTMS stating that WHNT's proposed post-DTV transition operation on Channel 19 would create 0.3 percent impermissible interference to the baseline service population of WGCL's "elected DTV [channel] 19." The letter further stated that NYTMS may resolve the conflict by, among other options, "negotiating a conflict resolution agreement with the station(s) with which [WHNT is] in conflict." Interference studies commissioned by NYTMS and presented to Meredith Corp. suggest that interference from WHNT's proposed Channel 19 operation would be located at the periphery of the WGCL service area.

In the post-transition environment, Meredith Corp. may wish to make certain changes to WGCL's operating parameters that could result in new interference by WGCL to 0.3 percent of WHNT's baseline service population.

Accordingly, subject to the FCC's approval of this agreement, the parties make the following agreements:

**First**, consistent with the FCC's Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, MB Docket No. 03-15 (rel. Sept. 7, 2004), and, for the purpose of facilitating grant of WHNT's channel election, Meredith Corp. hereby agrees that WGCL will accept the predicted interference by WHNT to 0.3



percent of the WGCL service area population, based upon the facilities certified to the FCC in WHNT's Form 381 filing (FCC File No. BCERCT-20041105AGF) and in WGCL's Form 381 filing (FCC File No. BCERCT-20041105AIQ).

**Second,** to facilitate WGCL in providing a robust DTV service after the conclusion of the DTV transition, NYTMS hereby agrees that WHNT will accept new interference from WGCL to 0.3 percent of WHNT's Channel 19 service area population following the conclusion of the DTV transition.

**Third,** NYTMS agrees that if the actual interference from WHNT's Channel 19 operations to WGCL's baseline service population (based upon the facilities certified to the FCC in WGCL's Form 381 filing, FCC File No. BCERCT-20041105AIQ) exceeds 0.3 percent, WHNT will take appropriate action to reduce such interference to 0.3 percent, unless WHNT is able to obtain WGCL's consent to the additional interference.

**Fourth,** each of NYTMS and Meredith Corp. shall take all commercially reasonable steps to satisfy any questions or concerns raised by the FCC with respect to their first-round DTV election filings, notify the other of any such FCC inquiries, and furnish all information requested by the FCC with respect thereto.

No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless in a writing signed by the party against whom enforcement is sought. Neither party may assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. This Agreement constitutes the entire agreement and understanding of the parties hereto and supersedes all prior agreements and understandings with respect to the subject matter hereof. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their respective successors and permitted assigns. This Agreement shall be governed by the laws of the State of Alabama without giving effect to the choice of law provisions thereof. Each party shall bear all of its expenses incurred in connection with the transactions contemplated by this Agreement, including without limitation accounting and legal fees incurred in connection herewith. Except for the mutual consent set forth above, no consideration is being paid by either party in connection with this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

***[Remainder of this page is intentionally left blank; signature page follows]***

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first set forth above.

NEW YORK TIMES MANAGEMENT SERVICES

By: 

Name: ROBERT H. EDOFF

Title: PRESIDENT, BROADCAST MEDIA GROUP

MEREDITH CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_




IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first set forth above.

NEW YORK TIMES MANAGEMENT SERVICES

By: \_\_\_\_\_  
Name:  
Title:

MEREDITH CORPORATION

By:  \_\_\_\_\_  
Name:  
Title: Vice President & Director of Engineering

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
First Round Channel Election Application	)	File No. BFRECT-20050210AQQ
	)	Reply Reference No. 2-A726-NS
First Round Conflict Decision	)	File No. BFRCCCT-20050815ADO
	)	
Second Periodic Review of the Commission's	)	MB Docket No. 03-15
Rules and Policies Affecting the Conversion to	)	
Digital Television	)	

To: Chief, Media Bureau

**SUPPLEMENTAL SHOWING IN SUPPORT OF THE FIRST ROUND  
DTV CHANNEL ELECTION OF WHNT-TV**

New York Times Management Service ("NYTMS"), licensee of CBS-affiliated WHNT-TV, ch. 19 and WHNT-DT, ch. 59, Huntsville, AL ("WHNT") files this supplemental showing in support of its First Round Channel Election (File No. BFRECT-20050210AQ) of channel 19 for WHNT's operation following the conclusion of the transition to digital television ("DTV").

Despite having an out-of-core digital allotment, WHNT has led the Huntsville Designated Market Area ("DMA") in the DTV transition. For example, WHNT was the first station in its DMA to:

- Construct and begin operations of a DTV service. This service has operated without interruption since 2001 — well before WHNT's DTV construction deadline.
- Operate maximized DTV facilities (among commercial stations). Over 1.3 million viewers are now served by WHNT's DTV service.
- Broadcast and promote HDTV content.
- Provide DTV broadcasts in 5.1 surround sound.

As discussed below, approval of WHNT's election of channel 19 for its post-DTV transition operation is essential to preserve the public's free, over-the-air access to this market-leading CBS-affiliated DTV service at the conclusion of the transition and thereafter. In addition to the public interest benefits it would create, grant of WHNT's election would not materially affect the public's access to any existing DTV service.

When the Commission announced a new DTV Table of Allotments in 1997, providing existing stations a temporary second channel for DTV broadcasting during the transition, many stations in the Huntsville DMA were granted in-core DTV channels adjacent to their existing analog channels.<sup>1</sup> WHNT, however, received an out-of-core DTV allotment — channel 59.<sup>2</sup> Subsequent to that announcement, WHNT sought to identify an alternative, in-core channel to operate on during the DTV transition. Working with the Association for Maximum Service Television ("MSTV"), WHNT conducted two studies using the Commission's accepted DTV interference model, seeking (unsuccessfully it turned out) a DTV channel that would not result in new predicted interference to other DTV allotments or existing analog stations.<sup>3</sup> WHNT later engaged an independent engineering firm, duTreil, Lundin, and Rackley ("DLR") to reexamine the situation; the DLR study verified that during the transition no other channel is available to WHNT-DT. Even though it had no in-core option during the DTV transition,

---

<sup>1</sup> For example, WAAY-TV, NTSC ch. 31, was allotted DTV ch. 32; WHIQ(TV), NTSC ch. 25, was allotted DTV ch. 24; WAFF(TV), NTSC ch. 48, was allotted DTV ch. 49.

<sup>2</sup> Adjacent to WHNT's NTSC ch. 19 the Commission has provided allotments to WDHN(TV), NTSC ch. 18 and WYLE-DT, DTV ch. 20.

<sup>3</sup> See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd 14588 ¶ 222 (1997) ("We will require that a party requesting a modification of the DTV Table show that such modification would not result in any new predicted interference to other DTV allotments or existing NTSC stations.").

WHNT made significant investments in the transition, well in excess of the minimum requirements set by the Commission for stations with an out-of-core DTV channel.<sup>4</sup>

The Commission has long made known its presumption that stations with out-of-core digital allotments will operate on their in-core analog channels after the transition. In 2001, for instance, the Commission stated: “We presume that, except in extraordinary circumstances, stations that have one in-core and one out-of-core channel will remain on their in-core channel after the transition.”<sup>5</sup> Consistent with this longstanding principle, the Commission made clear in its *Second DTV Biennial Review* that stations with only one in-core channel, such as WHNT, will be “afforded a high priority in permitting their conversion to a DTV channel.”<sup>6</sup> The Commission explained that although it would generally prohibit, absent consent, channel elections for which more than 0.1% interference is predicted to another station’s elected channel:

With regard to stations with an allotted out-of-core DTV channel election to operate a DTV station on their in-core NTSC channel, we will permit the 0.1 percent additional interference limit to be exceeded on a limited basis in order to afford these stations an improved opportunity to select their NTSC channel. Such allowance is justified because these single channel licensees have only one in-core channel to select and may need this additional accommodation. We are concerned, however, that such operations not cause substantial interference to existing DTV service (e.g.

---

<sup>4</sup> As a result of its out-of-core allotment, WHNT has faced significantly greater financial exposure than its competitors because it had to purchase equipment and an antenna for non-adjacent operation that will no longer be useful following the transition.

<sup>5</sup> *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Report and Order and Further Notice of Proposed Rule Making, at ¶ 16 (rel. Jan. 19, 2001).

<sup>6</sup> *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, 19 FCC Rcd 18279, at ¶ 50 (2004) (“*Second DTV Biennial Review*”).

interfering within the area in which service replication is already being achieved by an operating station).<sup>7</sup>

Given its lack of an in-core DTV channel and in accordance with these policy pronouncements, WHNT made preparations to return to its in-core analog channel 19 for post-transition operations. For example, WHNT made substantial investments in its channel 19 antenna and transmitter system in order to accommodate the relocation of DTV facilities to that channel. And earlier this year, in the First Round of the DTV Channel Election process, WHNT elected its analog channel 19.<sup>8</sup>

On June 7, 2005, however, the Media Bureau sent WHNT a letter identifying four stations that would receive interference in excess of 0.1% from WHNT's post-transition DTV operations on channel 19. Specifically, the Bureau reported the following as "interference conflicts": 0.3% to elected NTSC ch. 18 of WCLP, Chatsworth, GA; 0.3% to elected DTV ch. 19 of WGCL, Atlanta, GA; 1.3% to elected DTV ch. 18 of WDBB, Bessemer, AL; and 6.1% to elected DTV ch. 20 of WYLE, Florence, AL. WCLP has since decided to revert its election to its DTV channel 33, and interference to that station is thus longer of concern.<sup>9</sup> Also, WGCL has consented to the 0.3% predicted interference to its station.<sup>10</sup> Accordingly, only the interference conflicts with WDBB and WYLE remain. As described below, grant of WHNT's election, notwithstanding the predicted interference to these stations' authorized service areas, will serve

---

<sup>7</sup> *Id.* at ¶ 56; *see also id.*, at ¶ 54, n.106 ("We note that the nature of the interference conflict differs with respect to an elected NTSC channel of a one-in-core station, which enjoys a special status, as opposed to an elected NTSC channel of a two-in-core station, which has the option to change its election to its currently assigned DTV channel.").

<sup>8</sup> *See* WHNT-TV, FCC Form 382, File No. BFRECT-20050210AQQ (filed Feb. 10, 2005).

<sup>9</sup> *See* WCLP-TV, FCC Form 383, File No. BFRCE-20050713ABB (filed July 12, 2005).

<sup>10</sup> As required by the Bureau in its recent Public Notice (DA 05-2233), WHNT has submitted a copy of the WHNT/WGCL interference consent to the Commission.

the public interest by preserving existing DTV service and maximizing the availability of WHNT's CBS-affiliated programming and local DTV service to the public.

**Grant Of WHNT's Election Would Not Materially Impact  
The DTV Service Provided By WDBB or WYLE**

WDBB (WB Affiliate): The Commission's recent Public Notice indicates that "whether [the interference] is outside the affected station's DMA" is an important factor in considering grant of a station's election notwithstanding interference in excess of 0.1%.<sup>11</sup> As documented in the attached engineering statement of DLR, the vast majority of interference to WDBB occurs *outside* that station's DMA (Birmingham). Specifically, WDBB would receive interference from WHNT inside the Birmingham market area to only 0.07% of its population, representing 1,070 persons. This figure is below the Commission's general 0.1% interference tolerance, and, even when interference both inside and outside the DMA is taken into account, is well below the 2% tolerance the FCC indicated would be acceptable to accommodate the elections of stations with only one in-core allotment.<sup>12</sup> By contrast, adjusting WHNT's technical parameters to reduce predicted interference to WDBB would cause hundreds of thousands of

---

<sup>11</sup> *DTV Channel Election: First Round Conflict Decision Extension and Guidelines for Interference Conflict Analysis*, Public Notice, DA 05-2233, at 3 (rel. Aug. 2, 2005) ("*Conflict Analysis Notice*").

<sup>12</sup> The Bureau's recent Public Notice (DA 05-2233) states that, "in general," the Commission will allow stations attempting to elect their only in-core channel to create up to 2.0% additional interference to other stations, based on such stations DTV replication facilities. Although the interference to WDBB of 1.3% is based on WHNT's maximization facilities, in light of the minimal nature of the interference within WDBB's DMA and the dramatic number of viewers that would lose service if WHNT were to reduce operations to replication service, the Commission should allow WHNT's election to proceed.

viewers to lose the DTV service WHNT now provides. The continuation of WHNT's existing DTV service should not be sacrificed in light of such minimal interference.<sup>13</sup>

WYLE (Ind.): As noted above, the Commission has announced that election of a station's only in-core channel will be "afforded a high priority." The only concern the Commission expressed with respect to this priority was the avoidance of substantial interference to existing DTV service.<sup>14</sup> Allowing WHNT's election to proceed would not interfere *at all* with any existing DTV service.

This is because WYLE has yet to construct a digital television facility. Moreover, recent statements in its fifth DTV construction extension request, currently pending before the Commission, suggest that its construction of digital facilities may not occur, if ever, until well after the likely end of the DTV transition in 2009.<sup>15</sup> Despite a sincere commitment to broadcasting, WYLE has long suffered financial difficulty, and the station's owner has publicly stated that its "revenue stream barely supports the analog operation," much less a digital facility.<sup>16</sup> Indeed, its most recent request for extension of the DTV construction deadline details a long list of obstacles to the launch of WYLE's DTV service, including the inability to obtain

---

<sup>13</sup> We note that none of the predicted interference occurs in an area where WDBB is now providing service. *See* Interference Exhibit.

<sup>14</sup> *Second DTV Biennial Review*, 19 FCC Rcd 18279 at ¶¶ 50, 56 (emphasis added).

<sup>15</sup> It is increasingly likely that Congress will set a "hard date" conclusion to the DTV transition for 2009. *See, e.g.*, Testimony of Edward O. Fritts, President and CEO of NAB Before the Senate Commerce Committee, July 12, 2005 ("Broadcasters accept that Congress will implement a 2009 hard date for the end of analog broadcasts."); Anne Veigle, *DTV Bill to be Subsumed in Budget Bill*, Comm. Daily, July 8, 2005 ("A scaled-back DTV provision setting a hard transition date of Jan. 1, 2009 ... will be part of a budget bill to be voted on in mid-Sept., Hill sources say.").

<sup>16</sup> *See* Doug Halonen, *A Why 2002? Problem: Small Stations Fear Missing Digital Deadline*, Electronic Media (March 8, 1999).



the six-figure financing necessary to purchase a digital transmitter.<sup>17</sup> WYLE's extension request also notes that it has lost access to primetime programming (for its analog station), most of its advertising revenues, and nearly every employee; all of these factors cast doubt on its DTV buildout.<sup>18</sup> While WHNT sympathizes with WYLE's situation, protection of a currently nonexistent DTV service that may never get on the air should not block preservation of WHNT's existing DTV service, which includes CBS network programming and more than 32 hours of local news, to hundreds of thousands of viewers in the post-transition environment.<sup>19</sup> Moreover, as described below, because no other channel is available that would preserve WHNT's existing service, and because WYLE has not yet constructed DTV facilities, it would be more appropriate and efficient to identify another DTV channel for WYLE.

**Operation On Channel 19 At Existing Parameters Is The Only Feasible Option For WHNT**

Since receiving the Bureau's letter, WHNT has diligently sought to resolve the interference conflict with the remaining two stations. WHNT has explored reductions in its own parameters, use of another in-core channel for its post-transition operation, and negotiated arrangements with WDBB and WYLE. Despite these efforts, grant of WHNT's First Round

---

<sup>17</sup> See WYLE-DT, FCC Form 337, BEPCDT-20050714ACE (filed July 13, 2005). WYLE's extension request indicates that a loan of \$110,000 to the station was rejected because of two "previously unknown liens" on the property to be used as collateral. Although WYLE asserts that it is working diligently to have those liens removed, it is unclear from WYLE's filing whether the lender will still be willing to provide financing to WYLE even if the liens are cleared. The extension request also does not provide enough information to know whether that loan would cover the remaining DTV construction costs.

<sup>18</sup> The extension request does not provide any estimate as to when DTV facilities may be built.

<sup>19</sup> It should be noted that the interference to WYLE is at the edge of its grade B service area. Therefore, if WYLE's financial problems lead it to construct reduced facilities, this also might reduce or eliminate interference from WHNT's operations on channel 19.

election remains the only viable option if existing DTV service to the Huntsville public is to be preserved.

*Reduction in parameters is not possible:* WHNT first investigated whether a reduction in WHNT's operating parameters could reduce interference to WDBB and WYLE without substantially sacrificing viewers' access to WHNT's existing DTV service. For example, DLR investigated the possibility of WHNT's operating with replication, as opposed to maximization, facilities. Although such operation would reduce interference to WDBB and WYLE (to 0.89% and 1.58%, respectively), it would deprive 342,278 *existing* DTV viewers of the DTV service now provided by WHNT.<sup>20</sup> On the day transition is completed, each of those 342,278 viewers would lose access to free, over-the-air CBS and local DTV and HDTV programming that will have been available without interruption for years. Accordingly, operation of WHNT at reduced parameters would not serve the public interest.

*Channel 19 is the only available in-core channel:* WHNT also explored the option of relocating to a channel other than its existing analog channel 19 for post-transition operation, even though such a move would expand the already formidable expense of relocating from its out-of-core DTV allotment. DLR analyzed possible options with reference to the channels that the Commission has tentatively designated to other stations in the market.<sup>21</sup> Unfortunately, this analysis concluded that operation in any of the "vacant" channels would result in substantial interference conflicts with other stations, and/or would not allow WHNT to maintain a reasonable level of DTV service to the Huntsville market.

---

<sup>20</sup> See note 12, *supra*.

<sup>21</sup> See *DTV Channel Elections for 1,554 Stations Participating in the First Round of DTV Channel Elections*, Public Notice, DA 05-174 (rel. June 23, 2005).

*Negotiated resolutions have not been forthcoming:* WHNT has also sought, and remains amenable to, good faith negotiations to obtain the consent of WDBB and WYLE to WHNT's First Round election. Despite facing substantial costs itself in relocating existing full power DTV operations to an in-core channel, WHNT has offered both WDBB and WYLE reasonable consideration to facilitate execution of an interference agreement or other technical resolution. Unfortunately, these efforts have thus far been unsuccessful.

First, WHNT commissioned DLR to study the location of predicted interference to WDBB, and presented that data to WDBB. As noted above, only 0.07%, or 1,070 persons, within WDBB's DMA (Birmingham) would receive interference from WHNT's channel 19 operations. In response to WHNT's request for consent to its channel 19 election, WDBB indicated that it would not grant consent under any circumstances. Nonetheless, WHNT approached WDBB a second time, offering, as consideration for WDBB's consent, to accept interference from WDBB to 1.3% of WHNT's population in *any part* of WHNT's service area. And again, WDBB declined to consent.

Second, WHNT approached WYLE to negotiate the terms of an interference consent. WYLE made clear, however, that despite its lack of a DTV facility, it would consent only if provided monetary consideration in the "six figure" range.<sup>22</sup> Based on initial, encouraging discussions with WYLE's counsel about the possibility of a channel change for WYLE to resolve the interference conflict, WHNT also commissioned DLR to study the availability of an alternate channel for WYLE that would allow both stations to operate at

---

<sup>22</sup> In light of WYLE's stated need for \$110,000 to purchase a digital transmitter, WHNT is concerned that WYLE may be attempting to use the channel election process to fund its much-delayed DTV conversion.

certified facilities without interference. DLR determined that, unlike WHNT's situation, there are numerous alternate DTV channel options available to WYLE. WHNT provided this information to WYLE, along with the technical information with respect to WHNT's certified DTV operations on channel 19, as WYLE's counsel requested. WHNT also indicated that it would consider a financial arrangement with WYLE based on the costs of "relocating" to a different DTV channel, such as the reasonable costs of equipment — if any — that has been purchased for WYLE's channel 20 facilities, to the extent such equipment could not be used for alternate channel operations. WHNT also offered to set up a conference call to permit WYLE's engineer to question directly DLR and WHNT to ensure that all needed information was provided to WYLE. WYLE's counsel declined such a call, however, and indicated that a substantial premium above relocation costs would be required in order for WYLE to have any interest in considering such a resolution. Despite these setbacks, WHNT hopes that discussions with WYLE will continue and that the parties can reach agreement on reasonable terms to resolve the interference conflict.<sup>23</sup> Notwithstanding WHNT's efforts to negotiate a settlement, however, the FCC should grant WHNT's channel election because it is in the public interest, it is consistent with the Commission's longstanding presumptions with respect to stations with only one in-core channel, and it is consistent with the Commission's decision in the *Second DTV*

---

<sup>23</sup> WHNT did not believe that the FCC's Form 383 deadline should interfere with its efforts to find a negotiated resolution of this matter. WYLE's counsel has expressed concern, however, about the filing deadline for Form 383 as it related to our discussions of this matter. WHNT continues to believe the deadline should not be an impediment to our negotiations. In any event, WHNT has been diligent in engaging in the long process of considering and analyzing all alternatives, including examining interference and alternative channel options. WHNT initially contacted WYLE on July 29, provided it with the relevant information on August 4, and continued to try to work with WYLE. Certainly at no time did WHNT attempt to use the August 15 deadline as a tool in the negotiations.

*Biennial Review* to afford a high priority to allowing licensees with out-of-core DTV channels to operate on their in-core analog channels after the transition.

### **CONCLUSION**

At the conclusion of the DTV transition, over 1.3 million viewers in the Huntsville market will have enjoyed free, over-the-air access to WHNT's CBS and local DTV and HDTV programming for at least half a decade. To ensure that nearly 350,000 of these viewers do not suddenly lose this market-leading DTV service, the Commission should approve WHNT's election of channel 19 – the station's only in-core channel. In contrast to the many public interest benefits of WHNT's post-transition operation on channel 19, it will not materially harm the public's access to any other existing DTV service. Accordingly, WHNT respectfully requests that its First Round DTV channel election be approved.

Respectfully Submitted,



---

Jennifer A. Johnson  
Aaron Cooper  
Matthew S. DelNero  
COVINGTON & BURLING  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401

*Counsel for New York Times Management  
Services*

August 15, 2005

TECHNICAL STATEMENT  
IN SUPPORT OF WHNT  
DTV CHANNEL ELECTION

This Technical Statement supports the DTV Channel Election for WHNT at Huntsville, Alabama. WHNT operates on NTSC Channel 19 and DTV out-of-core on Channel 59. WHNT elected its NTSC Channel 19 for final DTV operation, but causes interference to three stations in excess of the Commission's 0.1% limit of new interference.

Tabulated below are the interference statistics, as calculated by the FCC, for the three affected stations where greater than 0.1% interference is created by WHNT-DT on Channel 19:

Subject Station	Interference Caused
WHNT Huntsville, AL	6.1% to WYLE Florence, AL
NTSC - 19	1.3% to WDBB Bessemer, AL
DTV - 59	0.3% to WGCL Atlanta, GA
Elected to 19	

Table 1. Interference Caused on WHNT's Elected Channel.

Note, for station WGCL at Atlanta, an interference agreement between WHNT and WGCL has been obtained. Therefore, no additional consideration for WGCL is herein provided.

It is noted that WHNT certified to replicate its DTV Channel 59 maximized operation (BMPCDT-20041105AGI) on Channel 19 with a resulting non-directional effective radiated power of 458.31 kW and an antenna height above average terrain of 514 meters (herein "maximized").

Impact to WDBB - Channel 18 - Bessemer, Alabama

Tabulated below is the interference caused population information for WDBB, considering the interference both within and outside of WDBB's "home" DMA of Birmingham, Alabama:

DTV Facility	Interference
Outside Birmingham DMA	1.22% (18,911 persons)
Inside Birmingham DMA	0.07% (1,070 persons)

Table 2. Interference Caused to WDBB (BPCDT-19991101AEA)  
from WHNT at Maximized Facility

Figure 1 is an associated map showing the predicted interference caused to the WDBB-DT construction permit (BPCDT-19991101AEA) from the maximized WHNT Channel 19 facility. Also shown are the DMA boundaries. No interference to the current WDBB-DT STA facility is predicted (BMDSTA-20050415AEB) from the maximized WHNT Channel 19 facility.

Impact to WYLE - Channel 20 - Florence, Alabama

Figure 2 is a map showing the predicted interference caused to the WYLE-DT construction permit (BPCDT-19991101ALK) from the maximized WHNT Channel 19 facility.

It is determined that WYLE's digital operation could instead operate on Channel 46 and be in compliance with the Commission's allocation criteria. This Channel 46 facility for WYLE would be the same as that authorized by FCC File Number BPCDT-19991101ALK, considering the dipole antenna adjustment. On Channel 46, WYLE would cease to be an allocation issue for WHNT on Channel 19. WYLE on Channel 46 would provide service to 362,173 persons,



interference-free. WYLE on Channel 20 would provide service to 361,004 persons, interference-free.

Other available channels for WYLE may include 21, 27, 28, 29 and 51. Further studies would need to confirm these alternate channels are available.

Alternatives for WHNT DTV Operation

An "alternate" WHNT facility was also analyzed. This WHNT facility would just replicate its existing NTSC facility on Channel 19, which would be a non-directional effective radiated power of 40.7 kilowatts with an antenna height above average terrain of 531 meters. However, as tabulated below, this replicated facility would serve a population that is 342,278 persons lower, or 25 percent less, compared to its associated DTV maximized facility.

DTV Facility	Total Population
DTV Maximized Facilities DTV-19 458.31 kW 514 m HAAT	1,349,610 persons
DTV Replicated Facilities DTV-19 40.7 kW 531 m HAAT	1,007,332 persons
<b>Population Lost</b>	<b>342,278 persons</b>

Table 3. Population Served by WHNT for Maximized & Replicated Facilities on Channel 19.

An allocation study was also completed for WHNT to determine if a high-band VHF or another UHF channel is available. However, no other channel was found for a maximized WHNT facility that satisfied the Commission's 0.1% limit on new interference. Figure 3 is a tabulation of the primary allocation preclusion for each of the

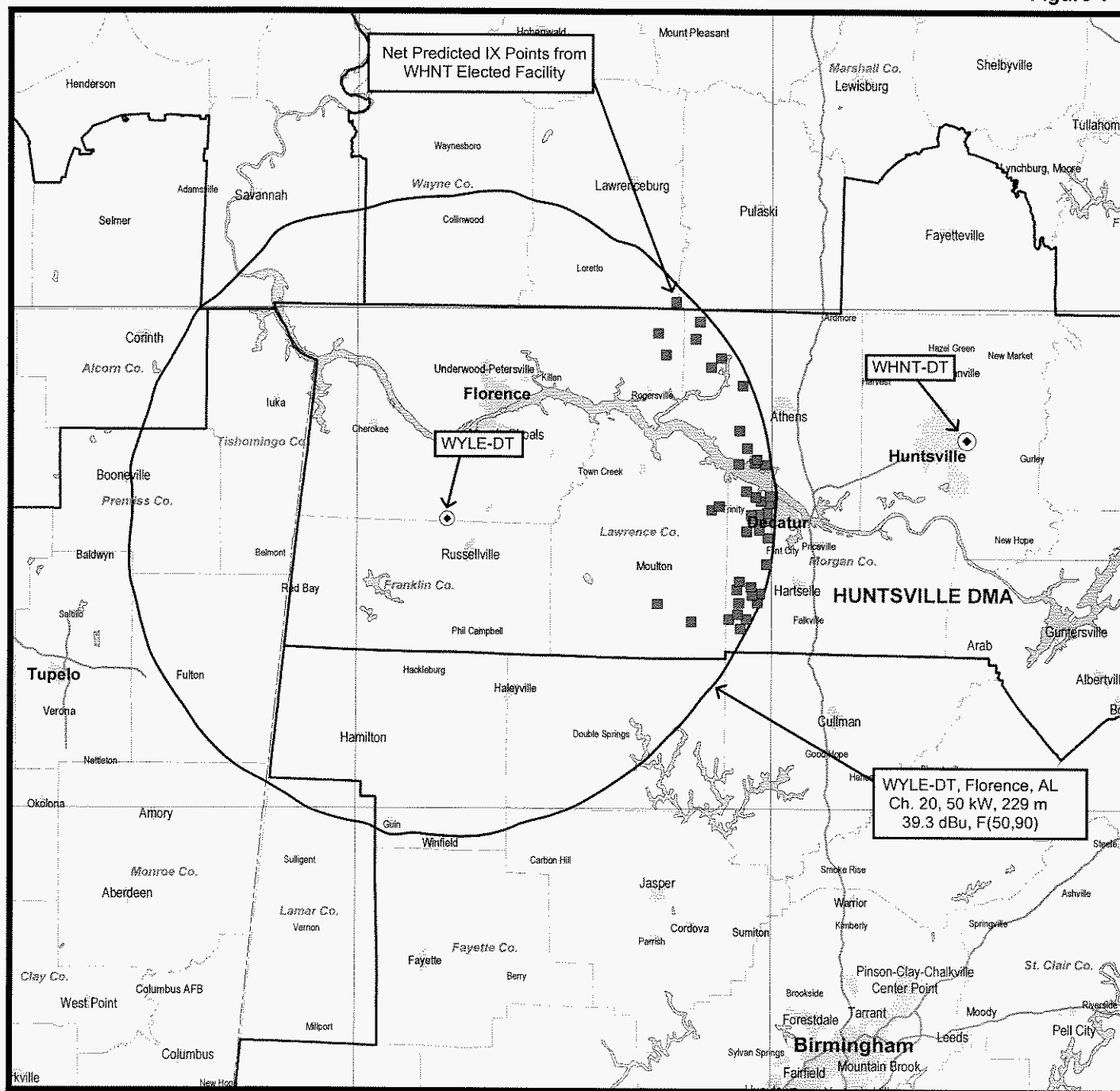
studied alternate channels for WHNT. Therefore, any other WHNT DTV facility that would satisfy the Commission's allocation criteria would be smaller and serve significantly less population than its DTV maximized facility.

Jerry Manarchuck

du Treil, Lundin & Rackley, Inc.  
201 Fletcher Avenue  
Sarasota, Florida 34237  
941.329.6000

August 15, 2005

Figure 1

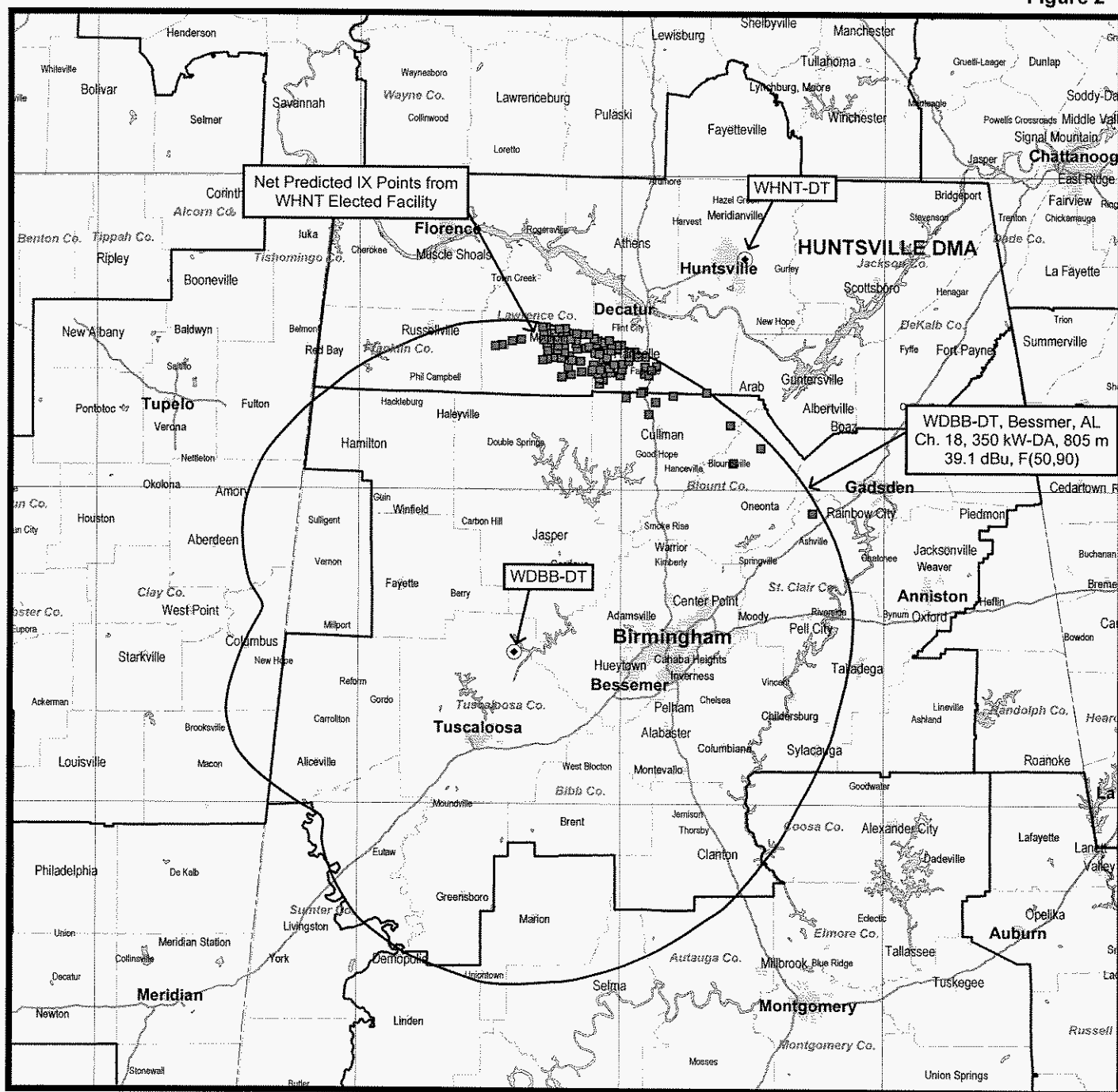


## PREDICTED INTERFERENCE TO WYLE-DT FROM WHNT-DT ELECTED FACILITY

Prepared for:  
WHNT-DT  
HUNTSVILLE, ALABAMA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 2



## PREDICTED INTERFERENCE TO WDBB-DT FROM WHNT-DT ELECTED FACILITY

Prepared for:  
WHNT-DT  
HUNTSVILLE, ALABAMA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 3  
Sheet 1 of 2

SUMMARY OF ALTERNATE DTV CHANNEL SEARCH  
FOR WHNT-TV, HUNTSVILLE, AL

Channel Studied	Station(s) Potentially Impacting Channel	Dist. (km) <sup>1</sup>	Notes
<b>VHF Channels</b>			
7	WCIQ (NTSC), Ch. 7, Mount Cheaha, AL	154	WCIQ DTV Elected Channel 7/FCC Tentative Approval Received
8	WNPT (NTSC), Ch. 8, Nashville, TN	148	WNPT DTV Elected Channel 8/FCC Tentative Approval Received
9	WTVC (NTSC), Ch. 9, Chattanooga, TN	120	WTVC DTV Elected Channel 9/FCC Tentative Approval Received
10	WSMV (DTV), Ch. 10, Nashville, TN	159	WSMV DTV Elected Channel 10/FCC Tentative Approval Received
11-12	WDEF (NTSC), Ch. 12, Chattanooga, TN	119	WDEF DTV Elected Channel 12/FCC Tentative Approval Received
13	WRCB (DTV), Ch. 13, Chattanooga, TN	121	WRCB DTV Elected Channel 13/FCC Tentative Approval Received
<b>Core UHF Channels</b>			
14-15	WHDF (NTSC), Ch. 15, Florence, AL	62	WHDF DTV Elected Channel 15/FCC Tentative Approval Denied
16	WELF-TV (DTV), Ch. 16, Dalton, GA	108	WELF DTV Elected Channel 16/FCC Tentative Approval Received
17	WDBB (DTV), Ch. 18, Bessemer, AL	161	WDBB DTV Elected Channel 17/FCC Tentative Approval Received
18	WDBB (DTV), Ch. 18, Bessemer, AL	161	WDBB DTV Elected Channel 17/FCC Tentative Approval Received
19	<i>WHNT Currently Elected DTV Channel</i>		
20	WYLE (DTV), Ch. 20, Florence, AL	111	WYLE DTV Elected Channel 20/ FCC Tentative Approval Received
21	WUXP (DTV), Ch. 21, Nashville, TN	171	WUXP DTV Elected Channel 21/ FCC Tentative Approval Received
22	WFIQ (DTV), Ch. 22, Florence, AL	116	WFIQ DTV Elected Channel 22/FCC Tentative Approval Received
23	WNAB (DTV), Ch. 23, Nashville, TN	171	WNAB DTV Elected Channel 28/FCC Tentative Approval Received
24	WHIQ (DTV), Ch. 24, Huntsville, AL	0	WHIQ DTV Elected Channel 24/FCC Tentative Approval Received
25	WATL (DTV), Ch. 25, Atlanta, GA	226	WATL DTV Elected Channel 25/FCC Tentative Approval Received
26	WTJP (DTV), Ch. 26, Gadsden, AL	103	WTJP DTV Elected Channel 26/FCC Tentative Approval Received
27	WKRN (DTV), Ch. 27, Nashville, TN	148	WKRN DTV Elected Channel 27/FCC Tentative Approval Received
28	WTTQ (DTV), Ch. 28, Homewood, AL	141	WTTQ DTV Elected Channel 28/FCC Tentative Approval Received
29	WTCI (DTV), Ch. 29, Chattanooga, TN	126	WTCI DTV Elected Channel 29/FCC Tentative Approval Received
30	WIAT (DTV), Ch. 30, Birmingham, AL	141	WIAT DTV Elected Channel 30/FCC Tentative Approval Received
31	WIAT (DTV), Ch. 30, Birmingham, AL	141	WIAT DTV Elected Channel 30/FCC Tentative Approval Received
32	WAAY (NTSC), Ch. 31, Huntsville, AL	0	WAAY DTV Elected Channel 31/FCC Tentative Approval Denied
33	WCFT-TV (NTSC), Ch. 33, Tuscaloosa, AL	162	WCFT-TV DTV Elected Channel 33/FCC Tentative Approval Denied
34	WTNZ (DTV), Ch. 34, Knoxville, TN	274	WTNZ DTV Elected Channel 34/FCC Tentative Approval Received
35	WCBT (DTV), Ch. 35, Columbus, MS	242	WCBT DTV Elected Channel 35/FCC Tentative Approval Received
36	WABM (NTSC), Ch. 36, Birmingham, AL	141	WABM DTV Elected Channel 36/ FCC Tentative Approval Received
37	Reserved for Radio Astronomy	--	

**Figure 3**  
**Sheet 2 of 2**

38	WEMT (DTV), Ch. 38, Greeneville, TN	374	WEMT DTV Elected Channel 38/ FCC Tentative Approval Received
39	WYHB-CA, Ch. 39, Chattanooga, TN WHTN (DTV), Ch. 39, Murfreesboro, TN	126 149	WHTN DTV Elected Channel 39/ FCC Tentative Approval Denied
40	WDSI (DTV), Ch. 40, Chattanooga, TN	126	WDSI DTV Elected Channel 40/ FCC Tentative Approval Received
41	WZDX (DTV), Ch. 41, Huntsville, AL	0	WZDX DTV Elected Channel 41/ FCC Tentative Approval Received
42	WFLI (DTV), Ch. 42, Cleveland, TN	126	WFLI DTV Elected Channel 42/ FCC Tentative Approval Received
43	WBBJ (DTV), Ch. 43, Jackson, TN	221	WBBJ DTV Elected Channel 43/ FCC Tentative Approval Received
44	WJFB (DTV), Ch. 44, Lebanon, TN	158	WJFB DTV Elected Channel 44/ FCC Tentative Approval Received
45-46	WPXH (DTV), Ch. 45, Gadsden, AL	94	WPXH DTV Elected Channel 45/ FCC Tentative Approval Received
47	WLJT (DTV), Ch. 47, Lexington, TN	216	WLJT DTV Elected Channel 47/ FCC Tentative Approval Received
48-50	WAFF (NTSC), Ch. 49, Huntsville, AL	3	WAFF DTV Elected Channel 49/ FCC Tentative Approval Received
51	WPGD (DTV), Ch. 51, Hendersonville, TN	171	WAFF DTV Elected Channel 51/ FCC Tentative Approval Received

<sup>1</sup> Distance from current WHNT site.